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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

FLORO ZARATE et al., Plaintiffs and Respondents, v. RODELIO MANUEL et al., Defendants and Appellants.	A125662 (Alameda County Super. Ct. No. RG05-241380)

I.

Appellants appeal from the trial court's award of attorney fees in the amount of $23,760, and costs of $125.03, relating to a prior appeal in this case. The sole issue raised is appellants' claim that the trial court improperly denied their motion to tax costs because respondents' memorandum of costs and accompanying motion were untimely filed in the trial court following issuance of the remittitur in case A117808.

We disagree that the memorandum was untimely filed. Therefore, we affirm.

II.

This is the third appeal filed in connection with the above-captioned civil action. The first appeal (A117808) addressed the merits of the underlying judgment, which we affirmed in a written opinion filed on October 10, 2008. As part of the disposition in that opinion, we awarded respondents their costs on appeal.

The second appeal (A120686) challenged an award of attorney fees to respondents in the amount of $69,753.97, incurred in litigating the merits of the case in the trial court. We affirmed that award in a written opinion filed on May 28, 2009.

The current appeal (A125662) challenges the award of attorney fees in the amount of $23,760, and costs of $125.03, awarded to respondents by the trial court *after* we issued our opinion in A117808, the first appeal, and the remittitur issued.

The remittitur in A117808 was issued by the clerk of this court to the parties and to the superior court on January 22, 2009.[1] It is undisputed that respondents filed their memorandum of fees and costs and accompanying motion for attorney fees and costs on March 5—42 days after the remittitur issued.[2]

Appellants filed both their opposition to the motion for fees and costs and a motion to tax costs on March 23 and March 25, respectively. One of the grounds raised was that the motion for fees and costs, and the filing of the memorandum of fees and costs, were untimely.

By order dated April 3, the trial court granted respondents' motion for fees and costs. Appellants' motion to tax costs and fees was denied by minute order on May 29.

III.

California Rules of Court, rule 8.278(c)[3] provides: "(c) Procedure for claiming or opposing costs [¶] (1) Within 40 days after the clerk sends notice of issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the superior court a verified memorandum of costs under rule 3.1700. [¶] (2) A party may serve and file a motion in the superior court to strike or tax costs claimed under (1) in the manner required by rule 3.1700. [¶] (3) An award of costs is enforceable as a money judgment."

Similarly, rule 3.1702(c) governs the timing of motions for attorney fees brought in the trial court following an appeal: "(c) Attorney[] fees on appeal [¶] (1) Time for motion [¶] A notice of motion to claim attorney[] fees on appeal—other than the attorney[] fees on appeal claimed under (b)—under a statute or contract requiring the

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[1] On January 21, 2010, we granted respondents' motion that we take judicial notice of this court's register of actions in case A117808.

[2] All further dates are in the calendar year 2009, unless otherwise indicated.

[3] All further rule references are to the California Rules of Court.

court to determine entitlement to the fees, the amount of the fees, or both, must be served and filed within the time for serving and filing the memorandum of costs under rule 8.278(c)(1)."

It is undisputed that respondents' motion for attorney fees and their memorandum of costs were not filed until March 5, 42 days after the remittitur in case A117808 was "issued." Both had to be filed no later than 40 days after issuance. Respondents primarily argue that there is no evidence this court's docket entry indicating the remittitur "issued" on January 22, meant that a "notice of issuance" was sent the same day, within the meaning of rule 8.278(c)(1).

We need not address this question because, even assuming the clerk's entry on January 22 constitutes sending "notice of issuance" of the remittitur, respondents had the benefit of Code of Civil Procedure section 1013 (section 1013), which extended the time to respond to such notice an additional five days. That section states, in part, as follows:

"The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, *which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California* . . . but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. *This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court*." (Code Civ. Proc., § 1013, italics added.)

By its very terms, the statute applies to time limits prescribed by rules of court. Therefore, there is no basis for appellants to argue that the five additional days' "grace" for mailing does not apply to the 40-day limitation period set forth in rule 8.278(c)(1). Appellants have cited no authority which would so limit application of section 1013.

Moreover, we note that section 1013 specifies three discrete exceptions to the mailing grace period, involving motions for new trial, motions to vacate judgments, and notices of appeal. As this court has recently observed: "Under the standard rules of

statutory construction, we will not read into the statute a limitation that is not there. [Citation.]' (*People v. Bautista* (2008) 163 Cal.App.4th 762, 777 . . . ; see also *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 826 . . . ['it is not the court's place to insert words into [a] statute'].) Specifically, ' "[u]nder the maxim of statutory construction, *expressio unius est exclusio alterius*, if exemptions are specified in a statute, we may not imply additional exemptions unless there is a clear legislative intent to the contrary. [Citation.]" [Citation.]' (*Rojas v. Superior Court* (2004) 33 Cal.4th 407, 424 . . . .)" (*Suarez v. Pacific Northstar Mechanical, Inc*. (2009) 180 Cal.App.4th 430, 443.)

Because respondents filed their motion and memorandum of costs and fees with the time allowed by rule 8.278(c)(1), as extended by section 1013, the trial court properly granted the motion and awarded costs, while denying appellants' motion to tax costs.

IV.

The order granting costs and attorney fees to respondents, and the order denying appellants' motion to tax costs, are affirmed. Each party to bear their own costs and attorney fees incurred in this appeal.

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RUVOLO, P. J.

We concur:

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REARDON, J.

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SEPULVEDA, J.